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January 3, 2005

Lawrence Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 5600  
Congressman John Dingell

Dear Mr. Norton:

I am writing on behalf of Congressman John D. Dingell in response to the complaint filed by the Michigan Republican State Committee on November 2, 2004, alleging that a mailer paid for by the Michigan Democratic State Central Committee ("MDSCC") was coordinated with Congressman Dingell and therefore resulted in a contribution to him in violation of the Federal Election Campaign Act (the "Act").

The complainant does not plead a case of coordination under regulatory standards. Rather, the complainant implies a violation solely on the basis of assumptions and a false presentation of the facts. As is explained below, there is no basis for a finding that a violation of the Act or the Commission's regulations occurred in this matter. The Commission should therefore dismiss the matter without delay.

### DISCUSSION

The complainant asserts that an MDSCC mail piece supporting Kathy Angerer's candidacy for State House of Representatives was coordinated with Congressman Dingell, and that as a result the MDSCC's expenditures for the mail piece constituted an unlawful in-kind contribution to Congressman Dingell. Despite the complainant's allegations, however, the mail piece discussed in the complaint was not a "coordinated communication" under the Act or the Commission's regulations, and no unlawful contribution occurred.

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ANCHORAGE BEIJING BELLEVUE BOISE CHICAGO DENVER HONG KONG LOS ANGELES  
MENLO PARK OLYMPIA PORTLAND SAN FRANCISCO SEATTLE WASHINGTON, D C

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**A. The MDSCC Mail Piece Does Not Meet the "Conduct" Standard of the Commission's Rule, and Therefore is Not a Coordinated Communication Under the Law.**

The facts of the matter demonstrate that the complainant's conclusion that the MDSCC's mail piece is a coordinated communication is unsupported. Neither Congressman Dingell nor any agents acting on his behalf participated in the mailer in any way. It therefore does not meet the "conduct" standard of the Commission's regulation, and cannot qualify as a coordinated communication. Indeed, an examination of the Commission's "conduct" standard demonstrates that the mailer does not meet a single one of these standards.

**1. Neither Congressman Dingell nor his agents were "materially involved" in the creation of the piece.**

The crux of the complainant's claim that the mail piece was coordinated appears to rest on an assumption that the MDSCC's inclusion of a photograph of Congressman Dingell and a quotation from him indicates that he, or his agents, participated in the mailing. It is unclear why the complainant believes that the mere inclusion of a photograph or a quotation would indicate participation by Congressman Dingell, or even indicate that he knew about the mailing at all. A committee may lawfully create a communication featuring a candidate without involving him in it by, for example, using publicly available photographs or quotations. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 47-52 (1976); *see also* 11 C.F.R. § 100.16.

Congressman Dingell did not provide the MDSCC with either the photograph or the quotation included in the mail piece, nor did his campaign, nor any agent acting on his behalf or on behalf of his campaign. *See* Declaration of Michael T. Robbins II, attached. The complainant's allegation of "coordination" is therefore entirely unsupported. The complaint does not even offer any evidence to support it.

Even if Congressman Dingell had provided the quotation or the photograph to the MDSCC, this would not alone support a claim of "coordination" under the law. The Commission's "material involvement" standard requires the benefiting candidate, his campaign, or an agent of either to be "materially involved" in the payor's decisions regarding the content, audience, means, media outlet, timing, or duration of the communication. 11 C.F.R. § 109.21(d)(2). The mere provision of a quotation or a photograph to a person paying for a communication does not constitute "material involvement" under the Commission's rules. "Material involvement" would have

occurred only if Congressman Dingell, his campaign, or an agent of either provided the quotation or the photograph to the MDSCC specifically for the purpose of including it in the mail piece. *See id.* The complainant does not claim, nor could he, that this was the case. *See Robbins Decl.*

**2. None of the other conduct standards of the Commission's rule are present in this matter.**

The complainant does not allege, nor could he demonstrate, that any of the other conduct standards in the Commission's rule are present here. First, neither Congressman Dingell, nor his campaign or their agents, requested or suggested that the MDSCC create, produce, or distribute this mail piece. *See Robbins Decl.* The complainant does not allege, nor does he present facts to support an allegation, to the contrary. *See* 11 C.F.R. § 109.21(d)(1).

Second, neither Congressman Dingell, nor his campaign or their agents, had substantial discussions with the MDSCC about the communication as defined in the Commission's rule. *See Robbins Decl.* Again, the complainant does not allege, nor does he present facts to support an allegation, that such discussions took place, or that the mail piece was created as a result of such discussions. *See* 11 C.F.R. § 109.21(d)(3).

Third, the complainant does not allege that the MDSCC and Congressman Dingell employed a common vendor who shared information with the MDSCC that was material to the creation of the mail piece. *See Robbins Decl.* In fact, no such common vendor existed. *See* 11 C.F.R. § 109.21(d)(4).<sup>1</sup>

**B. As No Coordination Occurred, the Disclaimer Need Not Have Indicated that the Mail Piece was "Authorized By" Congressman Dingell.**

The complainant also alleges that the mail piece should have featured a disclaimer that indicates that Congressman Dingell authorized it. However, as the mail piece was not in fact coordinated with Congressman Dingell, his campaign, or their agents, no such authorization statement is required. *See* 11 C.F.R. § 110.11.

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<sup>1</sup> As the MDSCC paid for the mail piece, coordination through the activities of an independent contractor or former employee could not have occurred. *See* 11 C.F.R. § 109.21(d)(5).

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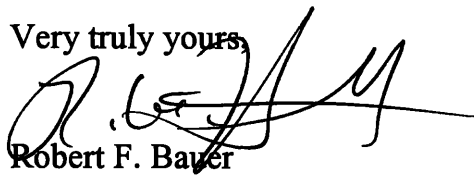
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### CONCLUSION

The complainant has blatantly misrepresented the facts of this matter in reaching his conclusion that the MDSCC mailing was "coordinated," in violation of law, with Congressman Dingell or his campaign. In fact, coordination under the Act is not alleged in this matter. None occurred.

For this reason and for all the reasons discussed above, the Commission should find no reason to believe that a violation of the Act occurred in this matter, and should dismiss the complaint without delay.

Very truly yours,



Robert F. Bayer

Rebecca H. Gordon

Counsel to Respondent Congressman John D. Dingell

**DECLARATION OF MICHAEL T. ROBBINS II**

1. My name is Michael T. Robbins II.
2. During the 2004 election cycle, I was employed as campaign manager of John D. Dingell for Congress Committee, Congressman John D. Dingell's authorized political committee.
3. Among the responsibilities of my job was to supervise and review any public communications distributed relating to Congressman Dingell's reelection campaign.
3. To the best of my knowledge, neither Congressman Dingell, nor any employee of his campaign or agent acting on his behalf or on behalf of his campaign, reviewed the Michigan Democratic State Central Committee ("MDSCC") mail piece supporting Kathy Angerer attached to the complaint in MUR 5600 ("Angerer mail piece") before it was distributed.
4. To the best of my knowledge, neither Congressman Dingell, nor any employee of his campaign or agent acting on his behalf or on behalf of his campaign, participated in any way in the creation, production, or distribution of the Angerer mail piece.
5. To the best of my knowledge, neither Congressman Dingell, nor any employee of his campaign or agent acting on his behalf or on behalf of his campaign, provided to the MDSCC the quotation or the photograph of Congressman Dingell that appears in the Angerer mail piece.
6. To the best of my knowledge, neither Congressman Dingell, nor any employee of his campaign or agent acting on his behalf or on behalf of his campaign, requested or suggested that the MDSCC create, produce, or distribute the Angerer mail piece.
7. To the best of my knowledge, neither Congressman Dingell, nor any employee of his campaign or agent acting on his behalf or on behalf of his campaign, was materially involved in any decisions concerning the Angerer mail piece, including but not limited to decisions about the content, audience, means or mode, timing, or size of the mail piece.
8. To the best of my knowledge, neither Congressman Dingell, nor any employee of his campaign or agent acting on his behalf or on behalf of his campaign, had

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substantial discussions within the meaning of 11 C.F.R. § 109.21(d)(3) with the MDSCC or its employees or agents about the Angerer mail piece.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on December 31, 2004.

A handwritten signature in cursive script, appearing to read "Michael T. Robbins II", written over a horizontal line.

Michael T. Robbins II

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